

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

FEB 10 1975

H. STUART CUNNINGHAM, CLERK
UNITED STATES DISTRICT COURT

THE MAGNAVOX COMPANY, a)
Corporation, and SANDERS)
ASSOCIATES, INC., a)
Corporation,)
Plaintiffs,)
v.)
BALLY MANUFACTURING)
CORPORATION, a Corporation,)
et al.,)
Defendants.)

Civil Action
No. 74 C 1030

PLAINTIFFS' MOTION FOR LEAVE TO FILE
INSTANTER SUPPLEMENTAL MEMORANDUM
IN OPPOSITION TO MOTION OF DEFENDANT
BALLY MANUFACTURING CORPORATION
FOR SUMMARY JUDGMENT

Plaintiffs hereby move the Court for leave to file instanter PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO MOTION OF DEFENDANT BALLY MANUFACTURING CORPORATION FOR SUMMARY JUDGMENT. That supplemental memorandum is submitted herewith. It is needed to meet the issues newly raised in the reply memorandum filed by defendant Bally Manufacturing Corporation (hereinafter "Bally") in support of its motion.

On November 26, 1974, Bally filed its motion seeking summary judgment dismissing this action as to it on the ground that, in the words of the motion, it "neither makes, uses, nor sells any of the accused devices, nor has it committed

genuine issues of material fact and, thus, should be denied.

Respectfully submitted,


Theodore W. Anderson

Attorney for Plaintiffs
The Magnavox Company
and
Sanders Associates, Inc.

77 West Washington Street
Chicago, Illinois 60602
(312) 346-1200

February 10, 1975

Of Counsel:

Thomas A. Briody, Esquire
The Magnavox Company
1700 Magnavox Way
Fort Wayne, Indiana 46804

Louis Etlinger, Esquire
Sanders Associates, Inc.
Daniel Webster Highway, South
Nashua, New Hampshire 03060

James T. Williams
Neuman, Williams, Anderson & Olson
77 West Washington Street
Chicago, Illinois 60602

LIBRARY

Continued From Page 39

The patented construction is aimed at advances in propulsion, aerodynamics, flight control, air-conditioning and quiet operation. The engines are smokeless and do not require dumping of unburned fuel. They can be interchanged and conveniently serviced.

The inventors are Richard T. Cathers, William M. Douglass, Frederick D. Hess Jr., John Morris and James E. Roberts.

Ship-Refueling System

A refueling system for combat ships at sea will transfer oil in a jet stream from a tanker without the use of a hose.

Alton L. Waldron, a supervisory mechanical engineer who heads the air contamination branch of the Naval Ship Research and Development Center Laboratory, Annapolis, Md., was granted Patent 3,658,101 this week.

According to the patent, the fuel is pumped from an oiler's tanks through a nozzle that shoots a coherent stream to a receiver on the combat ship alongside, from 60 to 200 feet away.

Although no hose is used, a protective elastic shroud is suspended from trolleys on a wire to surround the stream trajectory. This keeps the jet from being broken up and contaminated by air currents.

Because of the rocking who shift in the relative position of the ships, the oil stream is to be kept properly pointed by automatic training and elevation equipment covered by another Navy patent.

The refueling system has been tested, but not in full scale or aboard ship, and Mr. Waldron says some problems need further study.

* Tightrope-Walker Set

Tightrope apparatus invented by an engineer and his wife is intended to enable amateur acrobats to perform doors or cut. Cyril F. Baker Bell Telephone Laboratories, Orlando, Fla., and

Florence Baker were granted Patent 3,658,325 this week for the game.

The tightrope-walker set, as described in the patent, includes tape, cables, cross braces, bolts and instructions. The user can keep upright with a balancing pole or a parasol, and after practice can pick up a handkerchief from the floor or ground.

The tightrope is held at a modest altitude of 18 inches. Indoors, it can be fastened to both ends of a two-by-four. Grommets, anchors, are inserted in the ground. The equipment is not yet on the market.

Home Games Use TV

Electronic apparatus invented for Sanders Associates, Inc., Nashua, N. H., makes it possible to play simulated table tennis, handball, billiards, golf, hockey or other games on the home television set.

Patents 3,659,284 and 3,659,285, granted this week to William T. Rusch and two other staff members, have been licensed to a major television manufacturer, whose name has not been disclosed. The equipment may reach the market this year.

Control devices connected to the set enable players using joysticks to "bounce" dots and move squares, circles, crosses and other symbols around the screen.

In table tennis, three dots may represent two paddles and a ball, and the ball moves in a certain direction when hit by a paddle. A mask placed across the screen serves as a net.

For game purposes, advantage may be taken of commercial closed-circuit or cable television programs.

To get a copy of a patent, send the number and 50 cents to the Commissioner of Patents, Washington, D.C. 20231. Design patents are 20 cents each. To reach an inventor or assignee, if the address given is insufficient, write him care of the Commissioner of Patents, being sure to cite the patent number.

LEWIS IS SET TO RESIGN POST

Continued From Page 39

and preparation for a new "tedy round" of tariff-cut talks next year.

Deputy Undersecretary Daniel Samuels, United Nations Commissioner for Trade, said at the end of talks they had not

ST. BANKS DECLINE

Continued From Page 39

Drop in loan los is this year was indeed a reflection of a basic improvement in overall business conditions.

By contrast, loan losses at these 10 banking concerns—BankAmerica, First National City, Chase Manhattan, Manufacturers Hanover, J. P. Morgan, Chemical New York, Bankers Trust New York, Continental Illinois, First Chicago and Security Pacific—soared from \$73.9-million for the full year 1969, to \$136.3-million in 1970 to \$192.5-million in 1971.

The biggest single improvement in loan-loss experience in the first quarter this year was at the Chase Manhattan Corporation, where charge-offs dropped from \$17.9-million in the first quarter last year to \$3.2-million this year. Similarly, losses at Bankers Trust dropped to \$3.5-million from \$6-million last year.

Not all of the banks were down, however. At Chemical New York, losses rose to \$1.4-million this year from \$0.4-million in 1971, and at the Franklin National Bank (which is not included in the titulation of the 10 largest banks), loan losses jumped to \$2.1-million from \$450,000.

According to William B. Lewis Jr., senior executive vice president of the bank, the examiner had not finished at the end of March (the end of the first quarter) so that an additional bunching of loan losses was likely in the second quarter this year as well.

Earlier this week, at the annual meeting of the Franklin New York Corporation, the parent company of the bank, Arthur T. Roth—who built Franklin from a small Long Island institution to one of the nation's largest banks—attacked his successor, Harold V. Gleason, for his assertedly poor performance, including rising loan losses.

Seat Springs Record Price on Mercantile Exchange

CHICAGO, April 28 (AP)—The Chicago Mercantile Exchange announced today the sale of a membership at a high of \$80,000.

The former high for a seat on the commodity futures exchange was \$50,000, set on Dec. 9, 1969.

Buyer of the new membership was Raymond Resnick, an executive vice president of Weis, Voisin & Co., New York Stock Exchange member firm. The seller was William E. Read of the Canyon Commodity Corporation, Dallas, Tex.

	1 APRIL 28, 1972	TRADES IN PER CENT	DOMESTIC MARKET	FEDERAL FUNDS
Open	4.4		High	4.4
Discount Data (N.Y.)	4.4		Low	4.4
1st Inst. L.G. 16, 1971	4.4		Closes	4.4
1st Inst. Mar. 27, 1972	3.5	45.4%		
3 mos. mat. Treasury Bills (based)	3.53			
3 mos. Commer. Papers	3.53			
3 mos. Corp.	3.53			
3-12 mos. Corp.	4.16			
1-2 yrs. Corp.	4.16			
2-3 yrs. Corp.	4.16			
3-5 yrs. Corp.	4.16			
5-10 yrs. Corp.	4.16			
10-20 yrs. Corp.	4.16			
20-30 yrs. Corp.	4.16			
30-40 yrs. Corp.	4.16			
40-50 yrs. Corp.	4.16			
50-60 yrs. Corp.	4.16			
60-70 yrs. Corp.	4.16			
70-80 yrs. Corp.	4.16			
80-90 yrs. Corp.	4.16			
90-100 yrs. Corp.	4.16			
100-110 yrs. Corp.	4.16			
110-120 yrs. Corp.	4.16			
120-130 yrs. Corp.	4.16			
130-140 yrs. Corp.	4.16			
140-150 yrs. Corp.	4.16			
150-160 yrs. Corp.	4.16			
160-170 yrs. Corp.	4.16			
170-180 yrs. Corp.	4.16			
180-190 yrs. Corp.	4.16			
190-200 yrs. Corp.	4.16			
200-210 yrs. Corp.	4.16			
210-220 yrs. Corp.	4.16			
220-230 yrs. Corp.	4.16			
230-240 yrs. Corp.	4.16			
240-250 yrs. Corp.	4.16			
250-260 yrs. Corp.	4.16			
260-270 yrs. Corp.	4.16			
270-280 yrs. Corp.	4.16			
280-290 yrs. Corp.	4.16			
290-300 yrs. Corp.	4.16			
300-310 yrs. Corp.	4.16			
310-320 yrs. Corp.	4.16			
320-330 yrs. Corp.	4.16			
330-340 yrs. Corp.	4.16			
340-350 yrs. Corp.	4.16			
350-360 yrs. Corp.	4.16			
360-370 yrs. Corp.	4.16			
370-380 yrs. Corp.	4.16			
380-390 yrs. Corp.	4.16			
390-400 yrs. Corp.	4.16			
400-410 yrs. Corp.	4.16			
410-420 yrs. Corp.	4.16			
420-430 yrs. Corp.	4.16			
430-440 yrs. Corp.	4.16			
440-450 yrs. Corp.	4.16			
450-460 yrs. Corp.	4.16			
460-470 yrs. Corp.	4.16			
470-480 yrs. Corp.	4.16			
480-490 yrs. Corp.	4.16			
490-500 yrs. Corp.	4.16			
500-510 yrs. Corp.	4.16			
510-520 yrs. Corp.	4.16			
520-530 yrs. Corp.	4.16			
530-540 yrs. Corp.	4.16			
540-550 yrs. Corp.	4.16			
550-560 yrs. Corp.	4.16			
560-570 yrs. Corp.	4.16			
570-580 yrs. Corp.	4.16			
580-590 yrs. Corp.	4.16			
590-600 yrs. Corp.	4.16			
600-610 yrs. Corp.	4.16			
610-620 yrs. Corp.	4.16			
620-630 yrs. Corp.	4.16			
630-640 yrs. Corp.	4.16			
640-650 yrs. Corp.	4.16			
650-660 yrs. Corp.	4.16			
660-670 yrs. Corp.	4.16			
670-680 yrs. Corp.	4.16			
680-690 yrs. Corp.	4.16			
690-700 yrs. Corp.	4.16			
700-710 yrs. Corp.	4.16			
710-720 yrs. Corp.	4.16			
720-730 yrs. Corp.	4.16			
730-740 yrs. Corp.	4.16			
740-750 yrs. Corp.	4.16			
750-760 yrs. Corp.	4.16			
760-770 yrs. Corp.	4.16			
770-780 yrs. Corp.	4.16			
780-790 yrs. Corp.	4.16			
790-800 yrs. Corp.	4.16			
800-810 yrs. Corp.	4.16			
810-820 yrs. Corp.	4.16			
820-830 yrs. Corp.	4.16			
830-840 yrs. Corp.	4.16			
840-850 yrs. Corp.	4.16			
850-860 yrs. Corp.	4.16			
860-870 yrs. Corp.	4.16			
870-880 yrs. Corp.	4.16			
880-890 yrs. Corp.	4.16			
890-900 yrs. Corp.	4.16			
900-910 yrs. Corp.	4.16			
910-920 yrs. Corp.	4.16			
920-930 yrs. Corp.	4.16			
930-940 yrs. Corp.	4.16			
940-950 yrs. Corp.	4.16			
950-960 yrs. Corp.	4.16			
960-970 yrs. Corp.	4.16			
970-980 yrs. Corp.	4.16			
980-990 yrs. Corp.	4.16			
990-1000 yrs. Corp.	4.16			
1000-1010 yrs. Corp.	4.16			
1010-1020 yrs. Corp.	4.16			
1020-1030 yrs. Corp.	4.16			
1030-1040 yrs. Corp.	4.16			
1040-1050 yrs. Corp.	4.16			
1050-1060 yrs. Corp.	4.16			
1060-1070 yrs. Corp.	4.16			
1070-1080 yrs. Corp.	4.16			
1080-1090 yrs. Corp.	4.16			
1090-1100 yrs. Corp.	4.16			
1100-1110 yrs. Corp.	4.16			
1110-1120 yrs. Corp.	4.16			
1120-1130 yrs. Corp.	4.16			
1130-1140 yrs. Corp.	4.16			
1140-1150 yrs. Corp.	4.16			
1150-1160 yrs. Corp.	4.16			
1160-1170 yrs. Corp.	4.16			
1170-1180 yrs. Corp.	4.16			
1180-1190 yrs. Corp.	4.16			
1190-1200 yrs. Corp.	4.16			
1200-1210 yrs. Corp.	4.16			
1210-1220 yrs. Corp.	4.16			
1220-1230 yrs. Corp.	4.16			
1230-1240 yrs. Corp.	4.16			
1240-1250 yrs. Corp.	4.16			
1250-1260 yrs. Corp.	4.16			
1260-1270 yrs. Corp.	4.16			
1270-1280 yrs. Corp.	4.16			
1280-1290 yrs. Corp.	4.16			
1290-1300 yrs. Corp.	4.16			
1300-1310 yrs. Corp.	4.16			
1310-1320 yrs. Corp.	4.16			
1320-1330 yrs. Corp.	4.16			
1330-1340 yrs. Corp.	4.16			
1340-1350 yrs. Corp.	4.16			
1350-1360 yrs. Corp.	4.16			
1360-1370 yrs. Corp.	4.16			
1370-1380 yrs. Corp.	4.16			
1380-1390 yrs. Corp.	4.16			
1390-1400 yrs. Corp.	4.16			
1400-1410 yrs. Corp.	4.16			
1410-1420 yrs. Corp.	4.16			
1420-1430 yrs. Corp.	4.16			
1430-1440 yrs. Corp.	4.16			
1440-1450 yrs. Corp.	4.16			
1450-1460 yrs. Corp.	4.16			
1460-1470 yrs. Corp.	4.16			
1470-1480 yrs. Corp.	4.16			
1480-1490 yrs. Corp.	4.16			
1490-1500 yrs. Corp.	4.16			
1500-1510 yrs. Corp.	4.16			
1510-1520 yrs. Corp.	4.16			
1520-1530 yrs. Corp.	4.16			
1530-1540 yrs. Corp.	4.16			
1540-1550 yrs. Corp.	4.16			
1550-1560 yrs. Corp.	4.16			
1560-1570 yrs. Corp.	4.16			
1570-1580 yrs. Corp.	4.16			
1580-1590 yrs. Corp.	4.16			
1590-1600 yrs. Corp.	4.16			
1600-1610 yrs. Corp.	4.16			
1610-1620 yrs. Corp.	4.16			
1620-1630 yrs. Corp.	4.16			
1630-1640 yrs. Corp.	4.16			
1640-1650 yrs. Corp.	4.16			
1650-1660 yrs. Corp.	4.16			
1660-1670 yrs. Corp.	4.16			
1670-1680 yrs. Corp.	4.16			
1680-1690 yrs. Corp.	4.16			
1690-1700 yrs. Corp.	4.16			
1700-1710 yrs. Corp.	4.16			
1710-1720 yrs. Corp.	4.16			
1720-1730 yrs. Corp.	4.16			
1730-1740 yrs. Corp.	4.16			
1740-1750 yrs. Corp.	4.16			
1750-1760 yrs. Corp.	4.16			
1760-1770 yrs. Corp.	4.16			
1770-1780 yrs. Corp.	4.16			
1780-1790 yrs. Corp.	4.16			
1790-1800 yrs. Corp.	4.16			
1800-1810 yrs. Corp.	4.16			
1810-1820 yrs. Corp.	4.16			
1820-1830 yrs. Corp.	4.16			
1830-1840 yrs. Corp.	4.16			
1840-1850 yrs. Corp.	4.16			
1850-1860 yrs. Corp.	4.16			
1860-1870 yrs. Corp.	4.16			
1870-1880 yrs. Corp.	4.16			
1880-1890 yrs. Corp.	4.16			
1				

New 'toy' makes TV an electric game board

SIX YEARS AGO, a German-born American engineer in Nashua, N. H., turned his restive mind to the problem of what one could do with one's television set besides watch it. He decided it could be used for playing games.

The result, on the market since August, is Odyssey, a \$99.95 package of electronic equipment, charts, dice, cards and playing fields which will allow two people to simulate—on their TV screen—games of tennis, Ping-Pong, football, hockey, Submarine, Simon Says, roulette, Cat and Mouse, Analogic, Haunted House and States. A single individual operating the gadget also can simulate skiing, and for small additional investments, one can get material to play baseball, handball, volleyball, Invasion and Fun Zoo, to "shoot" at moving targets or "drive" an auto racing circuit.

If you find this a little spacey, you are not alone. Inventor Ralph Baer sold the huge technical firm where he works on the idea, but it took years to find a manufacturer. All the big names in television manufacturing looked at it. Many of them found it an intriguing idea but a risky one. Finally Magnavox, after researching the potential market, committed itself to a multi-million dollar risk and bought the copyright, to Odyssey. The electronic game set can be bought only at Magnavox dealers.

ODYSSEY WORKS THRU remote control. either by battery or external current. You can permanently attach an Odyssey receiver to any TV set which can muster a lighted screen. Good reception is not necessary. Once the receiver is attached, you set up the remote control center, to be operated by the players. Then you choose your game. All involve sticking an overlay—marked as a playing field—made of plastic material which will adhere to most picture tubes simply by static electricity. [If your tube isn't electric enough, it can also be taped.] The overlays come in

Johanna Steinmetz

TV Report



It's a new TV game show, but the audience does all the playing.

The next step is to insert a game card programmed for the particular game you are playing into the control center. This will furnish the screen with two movable players—squares of light—and one movable ball—a smaller square of light—which will react to one another according to the game in play.

When the game is set up, it becomes a matter of each player's skill and swiftness in handling the knobs on his remote control box. There is a knob to move the player's square vertically, a knob to move it horizontally and a knob to put "English" on the ball. The latter naturally, is the hardest to master.

The games range from the very simple, for young children and families, to the very complex. Tennis and Ping-Pong are simple in action. Simon Says and Haunted House are simple in concept. Football could take a year to get the hang of: It involves a chart to calculate wind factors, dice, drawing cards for strategy and the switching of passing, running and kicking program cards in and out of the remote control center as called for in the game.

WHEN ODYSSEY WAS demonstrated in my home



Tuesday morning, what few housekeeping instincts I have immediately reacted to its major drawback—packaging. In order to keep the cost within bounds, the game set comes in a large styrofoam box. It is filled with all the things you usually find in games but times seven—tokens, card decks, rubber bands, a die, playing fields, scorecards, markers, chips and folders. These must somehow be kept from winding up in the toybox, the old newspaper pile or under chair cushions.

Ralph Baer says he invented Odyssey "for the money" pointing out that the United States has 65,000,000 TV homes alone and that there is still the rest of the world to conquer. The only hitch is that Baer's invention belongs to the technical firm he works for, which in turn sold the worldwide copyright to Magnavox. Since the law stipulates that an inventor must be paid something, however, Baer is in receipt of \$3 or \$4, \$1 for each patent involved in the game. "But, the company has ways of rewarding me," says Baer. "I'm quite satisfied."

The Christmas spirit to be sure.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE MAGNAVOX COMPANY, a)
Corporation, and SANDERS)
ASSOCIAITES, INC., a)
Corporation,)
Plaintiffs,) Civil Action
v.) No. 74 C 1030
BALLY MANUFACTURING)
CORPORATION, a Corporation)
et al.,)
Defendants.)

SUPPLEMENTAL AFFIDAVIT OF THOMAS A. BRIODY

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

I, THOMAS A BRIODY, do depose and say as follows:

1. I am the same THOMAS A. BRIODY who on January 2, 1975 executed an Affidavit in the above-captioned action.

2. Magnavox has in the past and is now marketing a video game under the trademark "ODYSSEY". The two United States patents in suit in the above-captioned action, Nos. 3,659,284 and 3,659,285, relate at least in part to video games.

3. On November 27, 1972, a Roy E. Petherbridge contacted me twice by telephone. During our first telephone conversation, Mr. Petherbridge stated that he was an attorney and wanted to inquire as to whether the Magnavox Company was willing to grant licenses under the patent rights it had in its "ODYSSEY" video game. During that first conversation, Mr. Petherbridge did not reveal to me the identity of the client on whose behalf his inquiry was being made.

4. During my second telephone conversation with Mr. Petherbridge on November 27, 1972, he stated that the inquiry referred to in paragraph 3 hereof was being made on behalf of Bally Manufacturing Corporation, Chicago, Illinois.

5. On December 12, 1972, I wrote a letter to Mr. Petherbridge to inform him of the decision of The Magnavox Company with respect to his inquiry. A copy of that letter is attached hereto as Exhibit G.

Thomas A. Briody
Thomas A. Briody

SUBSCRIBED and SWORN to before me in Fort Wayne, Indiana, this 3rd day of February, 1975.

Linda Jeanne Schumann
Notary Public
My Commission Expires: September 2, 1978

December 12, 1972

Mr. Roy E. Petherbridge
53 West Jackson Boulevard
Chicago, Illinois 60604

Dear Roy:

During our several previous conversations, we have discussed the interests of your client, Bally Manufacturing of Chicago, in obtaining a license under our Odyssey patents.

This is to inform you that we are not presently disposed to grant licenses to any other companies under these patents. Upon reference to our management, it has been indicated that we are in the process of learning the many successful ways by which this product may and should be promoted. Without this know-how, we feel that a licensee would have considerable difficulty.

Accordingly, we wish to defer, at this time, any further consideration of licensing Bally. We are presently hopeful that during the first quarter of 1973, we will have a better appreciation of the market concerning Odyssey and, accordingly, will be in a better position to give honest consideration to various licensing proposals which have been presented to us.

Cordially yours,

Thomas A. Brody

TAB/mr

bcc: Bob Wiles
Bob Fritzsche
G. G. Martin